THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.10071 of 1999

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Dated:07.03.2006

Between:

R.Subbanna, S/o.Narayanappa.

..... PETITIONER

AND

The State of Andhra Pradesh, rep. By its Secretary,

Municipal Administration and Urban Development Department,

Government of Andhra Pradesh, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

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ORDER:

The petitioner is a resident of Anantapur Town. He filed the instant writ petition, *inter alia,* seeking a direction to the respondents to either allot the land equivalent to the value of the land, which was acquired/taken over from the petitioner or pay the compensation at the market value.

It is the case of the petitioner that he is the owner of the land admeasuring Ac.1.07 cents in Survey No.301 of Anantapur Village. The land was used for the purpose of laying a road from Prasannayapalli road to Engineering College road. The petitioner, therefore, requested the respondents to allot alternate land in L.P.No.33/89 in Sharadanagar. He alleges that the Municipal Council, Anantapur, passed resolution No.976, dated 06.01.1996, recommending to the Government to take action to provide alternate site in L.P.No.33/89 in Sharadanagar, as Municipality is not in a position to pay the compensation. In spite of the same, the petitioner did not get any redressal. Therefore, he filed the present writ petition.

The Commissioner, Anantapur Municipality, who utilized petitioner's land for laying the road, filed a counter affidavit admitting the claim of the petitioner. It is also stated that as required under Rule 4 of the Andhra Pradesh Municipalities (Acquisition and Transfer of Immovable Properties) Rules, 1967, the Municipal Council sent the proposals to the Government to allot another site in L.P.No.142/93 as requested by the petitioner. In the counter affidavit it is further stated that orders are awaited on the said proposals. Be it noted, the counter affidavit was filed before this Court on 05.06.2000.

The first respondent filed a separate counter affidavit. The title of the petitioner is not denied. The factum of the Municipality utilizing the petitioner's land for laying the road is not denied. It is further stated that the proposal of the Municipality was not considered, as the allotment of any land in the layout reserved as open space, is not desirable. Accordingly, the Municipal Council was requested to send alternate proposals.

After hearing the learned Counsel for the petitioner, the learned Assistant Government Pleader for Municipal Administration and the learned Standing Counsel for the Anantapur Municipality, one thing becomes very clear, the respondents are not denying any of the allegations made by the petitioner nor the right of the petitioner to claim the compensation, is denied. Indeed, it is admitted by the Municipality that there are no adequate funds to compensate the petitioner for the land admeasuring Ac.0.66 cents acquired in 1983-1984 for laying down the road. The petitioner, therefore, requested for allotment of the alternate site. Though, initially the Municipality proposed allotment of an alternate site, which unfortunately formed part of an open space in an approved layout, the Government rightly rejected the proposal. The allotment of open spaces or conversion of open spaces cannot ordinarily be upheld. In spite of the fact that the Government requested the Municipality to send alternate proposals, the same was not done.

In this background, this Court is of considered opinion that interest of justice would be met by directing the Anantapur Municipality to allot alternate site to the petitioner, taking into consideration that such land proposed for allotment is free from all encumbrances, and that such land shall not form part of any open space or park in any approved layout. This exercise shall be completed within a period of eight months from the date of receipt of a copy of this order. In case it is not possible to allot any land, the Municipal Council shall pay the adequate compensation to the petitioner under the Land Acquisition Act, 1894, within a period of eight weeks from

the date of refusal of allotment of alternate site.

The Writ Petition, with the above directions, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

07.03.2006

vs